

*Final Findings and
Conclusions of Law and Order*

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
JACK B. ROBINSON,)
Appellant,)
v.)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
Respondent.)

PCHB No. 929

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of an order directing the issuance of a ground water permit, came on for hearing before the Pollution Control Hearings Board (all members present) convened in Lacey, Washington, on June 1, 1976. William A. Harrison, hearing examiner, presided.

Appellant, Jack B. Robinson, appeared pro se. Respondent, Department of Ecology, appeared by and through its attorney, Joseph J. McGoran, Assistant Attorney General.

Witnesses were sworn and testified. Exhibits were admitted. From testimony heard and exhibits examined, the Pollution Control Hearings

1 Board makes these

2 FINDINGS OF FACT

3 I

4 Appellant desires to irrigate 22 acres of land in western
5 Washington for use as an orchard. Ground water withdrawn at the rate
6 of 10 GPM (gallons per minute) is generously ample for this use. This
7 we conclude from respondent's exhibits and testimony which appellant
8 failed to rebut with substantial evidence.

9 II

10 Instead of the 220 GPM (10 GPM X 22 acres) granted by the appealed
11 Department order, appellant seeks 350 GPM. Such a rate of withdrawal
12 has a much greater potential for waste than does the 220 GPM rate. Even
13 so, if confined to 2 acre-feet per acre per year, the 350 GPM rate
14 could be withdrawn and applied without waste if very cautiously
15 monitored at all times. Pumping would have to be stopped and resumed
16 frequently.

17 III

18 An irrigation system using the 220 GPM rate of withdrawal would be
19 less costly to appellant than one using 350 GPM.

20 IV

21 Any Conclusion of Law hereinafter stated which may be deemed a
22 Finding of Fact is hereby adopted as such.

23 CONCLUSIONS OF LAW

24 I

25 The Department of Ecology must disapprove every application for
26 ground water which would not entail a beneficial use of the water

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 withdrawn. 90.44 RCW, RCW 90.03.290, Stempel v. Department of Water
2 Resources, 82 Wn.2d 109 (1973).

3 II

4 While the Department cannot compel the applicant to use the 220
5 GPM rate solely because it would save the applicant money, the
6 Department can establish a GPM rate which assures beneficial use of
7 the water withdrawn. Thus the Department correctly approved withdrawal
8 at 220 GPM where potential for waste is low. At 350 GPM where potential
9 for waste is high, beneficial use can only be assured by the installation
10 of meters at the applicant's expense.

11 III

12 Any Finding of Fact which should be deemed a Conclusion of Law
13 is hereby adopted as such.

14 ORDER

15 Application No. 11715 for the withdrawal of ground water and its
16 associated order here appealed (dated January 20, 1976) are each
17 hereby remanded to the Department of Ecology for re-issuance in their
18 present form except that withdrawal at the rate of 350 GPM shall also
19 be permitted provided that a metering system which assures beneficial
20 use of the water is installed at appellant's expense. The order
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27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 appealed is in all other respects affirmed.

2 DONE at Lacey, Washington, this 8th day of June, 1976.

3 POLLUTION CONTROL HEARINGS BOARD

4 Chris Smith
5 CHRIS SMITH, Chairman

6 W. A. Gissberg
7 W. A. GISSBERG, Member

8 Walt Woodward
9 WALT WOODWARD, Member

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FINAL FINDINGS OF FACT,
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